

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing**

*National Housing Finance and Investment Corporation Act 2018*

*National Housing Finance and Investment Corporation Investment Mandate  
Amendment (Family Home Guarantee) Direction 2021*

Subsection 12(1) of the *National Housing Finance and Investment Corporation Act 2018* (the Act) provides that the Minister may, by legislative instrument, give the Board of the National Housing Finance and Investment Corporation (the NHFIC) directions about the performance of the NHFIC's functions. The Act establishes the NHFIC, a corporate Commonwealth entity dedicated to improving housing outcomes.

The purpose of the *National Housing Finance and Investment Corporation Investment Mandate Amendment (Family Home Guarantee) Direction 2021* (the Instrument) is to amend the *National Housing Finance and Investment Corporation Investment Mandate Direction 2018* (the Investment Mandate) to establish the Family Home Guarantee, extend the New Home Guarantee and amend the price caps applicable to the First Home Loan Deposit Scheme.

The Family Home Guarantee enables eligible single parents with dependants to enter the housing market sooner and purchase a home with a deposit of at least two per cent, subject to the individual's ability to service a home loan. From 1 July 2021, 10,000 Family Home Guarantees are available over four financial years.

The Instrument also extends the New Home Guarantee by making an additional 10,000 places available between 1 July 2021 and 30 June 2022.

The Instrument also amends the property price caps applicable to homes purchased with the support of the First Home Loan Deposit Scheme (including the Family Home Guarantee) for loans entered into from 1 July 2021. The changes to the price caps reflect market movements in house prices and enable the scheme to continue to support buyers purchasing a modest home sooner.

Consultation was undertaken with the NHFIC in the development of the Instrument and the accompanying Explanatory Statement, with some adjustments made to the Instrument and Explanatory Statement resulting from consultation to clarify the operation of the eligibility requirements for the Family Home Guarantee.

Details of the Instrument are set out in [Attachment A](#).

For the purposes of the *Legislation Act 2003*, the Instrument is a legislative instrument. The Instrument is exempt from disallowance under section 42 of the *Legislation Act 2003* as a result of regulations made for the purposes of paragraph 44(2)(b) of that Act.

The Instrument commenced the day after it was registered on the Federal Register of Legislation.

**Details of the *National Housing Finance and Investment Corporation Investment Mandate Amendment (Family Home Guarantee) Direction 2021***

**Section 1 – Name of the Instrument**

This section provides that the name of the Instrument is the *National Housing Finance and Investment Corporation Investment Mandate Amendment (Family Home Guarantee) Direction 2021* (the Instrument).

**Section 2 – Commencement**

Section 2 provides that the Instrument commences the day after it is registered.

**Section 3 – Authority**

Section 3 provides that the Instrument is made under subsection 12(1) of the *National Housing Finance and Investment Corporation Act 2018* (the Act).

**Section 4 – Schedule**

This section provides that each instrument that is specified in the Schedule to the Instrument will be amended or repealed as set out in the applicable items in the Schedule, and any other item in the Schedule to this instrument has effect according to its terms.

**Schedule 1 – Amendments**

**Establishment of the Family Home Guarantee**

The Family Home Guarantee is an expansion of the First Home Loan Deposit Scheme (the FHLDS) that supports single parents with dependent children seeking to enter, or re-enter, the housing market sooner and attain home ownership.

The Family Home Guarantee is intended to create a pathway to home ownership for single parents - who are predominantly women - with dependants who would otherwise struggle to save enough for a deposit while paying rent or restarting their lives following the breakdown of a relationship.

Like the FHLDS generally and the New Home Guarantee, the Family Home Guarantee provides a limited, first loss guarantee to participating lenders. It enables an eligible single parent to purchase a modest home with a deposit that is less than the 20 per cent typically required by banks and without needing to obtain lender's mortgage insurance.

*Eligible lenders*

Consistent with the FHLDS generally, the NHFIC must not issue a guarantee to an entity other than an eligible lender. An eligible lender is an entity approved by the NHFIC. The Instrument clarifies that different banks may be appointed as eligible

lenders in relation to the FHLDS generally, the New Home Guarantee and the Family Home Guarantee. (Schedule 1, item 3, subsection 29B(2A)).

### *Eligible loans*

An eligible loan for the purposes of the Family Home Guarantee is generally consistent with the requirements for an eligible loan for the purposes of the FHLDS generally and the New Home Guarantee. The requirements for an eligible loan for the purposes of the Family Home Guarantee are that, at the time the loan agreement is entered into:

- the loan is made by an eligible lender;
- the loan is for the purchase of residential property;
- if the loan relates to the purchase of an interest in land on which a dwelling is not affixed, the loan also relates to the construction of a dwelling on the land (for example, a house and land package);
- the value of the property does not exceed the price for the area in which the property is located. The applicable price caps for the Family Home Guarantee are described below;
- the property is to be owner-occupied;
- the terms of the loan agreement require scheduled payments of the principal of the loan for the full period of the agreement; and
- the loan agreement has a term of no more than 30 years.

The Instrument provides further features that are unique to the Family Home Guarantee:

- there is a single borrower under the loan agreement who will be the only registered owner of the property;
- the borrower is eligible even if they have previously owned a home provided they do not currently own a home;
- the borrower is an eligible single parent; and
- the loan-to-value ratio is between 80 and 98 per cent.

(Schedule 1, item 5, subsection 29C(2B)).

The requirement that there is a single borrower and a single registered owner of the property reflects the intention that the Family Home Guarantee is a dedicated pathway to home ownership for single parents. A single person who is a parent but who intends to borrow funds and own a home jointly with another person is not eligible under the Family Home Guarantee (they may instead be eligible under the FHLDS generally or the New Home Guarantee).

The loan-to-value ratio required for the Family Home Guarantee allows an eligible single parent to be supported where they have a deposit of at least two per cent of the purchase price of the property, meaning that the Guarantee applies to the difference between the deposit and 20 per cent of the property purchase price. In the event of

borrower default and sale of the property by the lender, the Family Home Guarantee covers the lender if there remains a shortfall amount owed (up to the maximum amount covered by the guarantee, which is not more than 18 per cent of the property purchase price).

While the Family Home Guarantee contemplates eligible single parents taking out loans with a loan-to-value ratio of up to 98 per cent, in practice – as with all home loans – a lender will only extend a loan of this nature to a borrower who has the capacity to service it.

All lenders are required to adhere to the *National Consumer Credit Protection Act 2009*, which governs the provision of credit, and authorised deposit-taking institutions are subject to requirements set out in prudential standards made under the *Banking Act 1959*. These frameworks include requirements directed toward preventing a credit provider from extending a loan that would result in the consumer facing substantial hardship. This means that credit providers, when undertaking their serviceability assessments to determine a consumer’s borrowing capacity, must consider whether the consumer can repay the loan without going into substantial hardship.

#### *Eligible single parents*

A key feature of the Family Home Guarantee is that the borrower is an ‘eligible single parent’.

A borrower for the purposes of the Family Home Guarantee must be single. The Investment Mandate specifies that an eligible single parent is single if they do not have a spouse or a de facto partner. The terms ‘spouse’ and ‘de facto partner’ take their meaning from the *Acts Interpretation Act 1901*. A borrower is not single if they are in the process of separating and divorcing but are still legally married.

In practice, in order to test whether a prospective borrower is single, an eligible lender may choose to require that the prospective borrower make a declaration to that effect. As part of the scheme rules that underpin the NHFIC’s arrangements with eligible lenders for the administration of the FHLDS, guidance material regarding the circumstances in which a person is single for the purposes of the Family Home Guarantee may be developed and provided to eligible lenders and prospective borrowers in order to inform their declaration.

For the purposes of the Family Home Guarantee, an adult person is an eligible single parent at the time the loan agreement is entered into if the adult has at least one dependent child. A person is a dependent child of the eligible single parent (the adult) if the adult is a natural or adoptive parent of the person and either:

- the person is a dependent child of the adult within the meaning of subsections (2), (3), (4), (5), (6) and (7) of section 5 of the *Social Security Act 1991*; or
- the person is at least 16 but under 22, is in receipt of a disability support pension within the meaning of the *Social Security Act 1991* and lives with the adult.

Generally, under subsections (2), (3), (4), (5), (6) and (7) of section 5 of the *Social Security Act 1991*, a person is a dependent child in any one of these circumstances:

- a young person who has not turned 16 is a dependent child of an adult if the adult is legally responsible for the day-to-day care, welfare and development of the young person, and the young person is in the adult's care;
- a young person has not turned 16 and is wholly or substantially in an adult's care, and is not a dependent child of someone else;
- a young person who is between 16 and 21, is wholly or substantially dependent on another person, and the young person's income in a financial year is not more than \$6,403 (this rate is indexed annually under Division 2 of Part 3.16 of the *Social Security Act 1991*).

Section 5 of the *Social Security Act 1991* provides circumstances where a person is not a dependent child, including:

- a young person who has not turned 16 is not in full-time education, and is in receipt of income that exceeds \$107.70 per week (this rate is indexed annually under Division 2 of Part 3.16 of the *Social Security Act 1991*);
- a young person who has turned 16 cannot be a dependent child of another person if the other person is the young person's partner;
- a young person is receiving a social security pension, a social security benefit, or payments under Labour Market Programs.

While generally the Instrument provides that a dependent child must not be receiving a social security pension, a person who is at least 16 but under 22, who is receiving a disability support pension and who lives with their natural or adoptive parent is a dependent child of the adult for the purposes of the Family Home Guarantee.

In practice, in order to test whether a prospective borrower is the natural or adoptive parent of a dependent child, an eligible lender may choose to require that the prospective borrower make a declaration to that effect. As part of the scheme rules that underpin the NHFIC's arrangements with eligible lenders for the administration of the FHLDS, guidance material regarding the circumstances in which a person has at least one dependent child for the purposes of the Family Home Guarantee may be developed and provided to eligible lenders and prospective borrowers in order to inform their declaration.

In addition, and at the time the loan agreement is entered into, an eligible single parent cannot hold any of the following interests:

- a freehold interest in real property in Australia;
- a lease of land in Australia (including a renewal or extension of such a lease) as described in paragraph 104-115(1)(b) of the *Income Tax Assessment Act 1997*; or
- a company title interest (within the meaning of Part X of the *Income Tax Assessment Act 1936*) in land in Australia.

Unlike the FHLDS generally and the New Home Guarantee, a borrower for the purposes of the Family Home Guarantee is not precluded from having previously held such a property interest. This recognises that a single parent with a dependent child may have owned property with a former partner prior to a relationship

breakdown. It also recognises that there is a special need for a single parent with a dependent child who wishes to set themselves on a pathway to home ownership but who has struggled to save enough for a deposit while paying rent or restarting their lives. While an eligible single parent is not required to be a first home buyer, they must not have a relevant property interest at the time the loan agreement is entered into.

Consistent with the treatment of eligible first home buyers for the purposes of the FHLDS generally and the New Home Guarantee, an eligible single parent for the purposes of the Family Home Guarantee must be 18 years of age and an Australian citizen. This must be the case at the time the loan agreement is entered into.

An eligible single parent must also satisfy the income test specified in section 29E of the Investment Mandate. For the Family Home Guarantee, because only one borrower is involved, only the second limb of the test is applicable. That is, for the purposes of the Family Home Guarantee, the taxable income of the borrower in the preceding income year must not have exceeded \$125,000. This is the same test that applies to a single borrower under the FHLDS generally and the New Home Guarantee. (Schedule 1, item 7, subsections 29D(3), (4) and (5)).

#### *Limits on the number of Family Home Guarantees*

The NHFIC may issue up to 10,000 Family Home Guarantees in the period beginning on 1 July 2021 and ending on 30 June 2025. Within the overall limit of 10,000 guarantees, there is no restriction on the number of guarantees that the NHFIC may issue in any of the individual years in this period. There is no capacity for unissued Family Home Guarantees to be rolled over beyond the issue period – that is, no Family Home Guarantees can be issued after 30 June 2025.

Consistent with the way that guarantees issued under section 29I and New Home Guarantees issued under section 29IB are counted, a Family Home Guarantee is issued in the financial year during which its issue is approved by the NHFIC, even if the arrangement relating to the guarantee is entered into in a later financial year. A Family Home Guarantee that is refinanced (see subsection 29C(4)) is not counted. (Schedule 1, item 16, section 29IB)).

#### *Interaction of guarantees issued under sections 29I, 29A and 29B*

The Instrument deals with the interaction between sections 29I, 29IA and 29IB by determining the order in which the NHFIC should issue a guarantee where a guarantee could be issued under the criteria for more than one of the FHLDS, the Family Home Guarantee and the New Home Guarantee.

Broadly, priority is given to the Family Home Guarantee and the New Home Guarantee. Where an applicant meets the criteria for both the Family Home Guarantee and the New Home Guarantee, the NHFIC has a discretion to issue a guarantee as either one of those guarantee types. In this circumstance, the guarantee cannot be issued under the FHLDS generally. A guarantee can only be issued under the FHLDS generally if the applicant is not otherwise eligible for the New Home Guarantee or the Family Home Guarantee. (Schedule 1, item 16, section 29IC).

This amendment is consistent with the arrangements prior to the Family Home Guarantee, where in the case of an overlap between the schemes, the NHFIC was empowered to issue a guarantee under the FHLDS generally or under the New Home Guarantee.

#### *Other amendments*

The Instrument clarifies that the NHFIC may establish different criteria and processes in relation to the approval of a panel of eligible lenders for guarantees issued under each of sections 29I, 29IA and 29IB. This amendment clarifies that different lenders may be appointed as eligible lenders in relation to the FHLDS generally, the New Home Guarantee and the Family Home Guarantee. (Schedule 1, items 3 and 4, subsections 29B(2A)).

Unlike the FHLDS generally and the New Home Guarantee, for the Family Home Guarantee there is no requirement for the number of guarantees that may be issued by major lenders to be no more than half of the available allocation. The intention is for all eligible lenders to participate in this important program to the greatest extent they are able. For the Family Home Guarantee, any participating lender that is able to offer places under the Family Home Guarantee may do so subject to an overall limit of 10,000 Family Home Guarantees to be issued in the period beginning 1 July 2021 and ending 30 June 2025.

The Instrument amends provisions relating to the scheme rules and reporting to incorporate the Family Home Guarantee. The amendments provide that the NHFIC must provide separate rules and policies for the Family Home Guarantee in addition to the rules and policies for the operation of the FHLDS generally (the scheme rules). The Instrument also provides that where the NHFIC amends the scheme rules, the NHFIC must provide a copy of the amended rules to the Minister no later than the day the first of the amendments come into effect. (Schedule 1, items 17 and 18, section 29JA).

Also, the Family Home Guarantee must be included separately in the reporting that the NHFIC is required to provide to the Minister under section 29L of the Investment Mandate. This is consistent with the treatment of the FHLDS generally and the New Home Guarantee. (Schedule 1, items 19 to 21, sections 29K and 29L).

#### **Extension of the New Home Guarantee**

The New Home Guarantee is an expansion of the FHLDS that enables a qualifying first home buyer to build a new home or purchase a newly built home. In addition to supporting first home buyers, the New Home Guarantee is aimed at expanding housing stock and stimulating the residential dwelling construction sector.

The Instrument amends the Investment Mandate to enable 10,000 New Home Guarantees to be issued in 2021-22. This is in addition to the 10,000 FHLDS guarantees that may be issued under section 29I (and any guarantees rolled over from the previous year), the 10,000 Family Home Guarantees that may be issued between 2021-22 and 2024-25 under new section 29IB, and any New Home Guarantees rolled over from 2020-21 under section 29IA. The amendments do not enable unissued



New Home Guarantees to be rolled over and issued beyond 2021-22. (Schedule 1, items 10 and 14, subsections 29IA(2A) and (12A)).

Consistent with the 2020-21 allocation of New Home Guarantees, the total number of New Home Guarantees issued to major banks in 2021-22 must not exceed 5,000 and 50 per cent of any number of guarantees rolled over from 2020-21. (Schedule 1, item 10, subsection 29IA(2B)).

The Instrument amends the construction commencement period under the New Home Guarantee from 6 months to a maximum of 12 months. The increase in the construction commencement period aligns with the requirements to build a new home under the FHLDS. (Schedule 1, items 11 and 12, subsection 29IA(3)).

### **New price caps**

For a loan to be eligible for support under the FHLDS (including the New Home Guarantee and the Family Home Guarantee), the value of the residential property at the time the loan is entered into must not exceed the price cap for the area in which the property is located. The price caps are intended to reflect the cost of a modest home, or the purchase of land and construction of a modest home in Australia, and apply on a regional basis. The Investment Mandate sets out the applicable price caps in relation to the area in which the property is located.

The Instrument repeals the current price caps and replaces them with new price caps. The new price caps ensure that the scheme remains reasonably accessible to first home buyers and reflect the cost of a modest home as well as recent movements in house prices across Australia. This increase follows a recommendation from the NHFIC to the Minister in accordance with section 29F of the Investment Mandate which enables the NHFIC to recommend to the Minister what adjustments (if any) it considers should be made to the price caps.

The new price caps are provided in the table below:

<b>Price Cap for an area</b>		
<b>Item</b>	<b>Area</b>	<b>Price cap</b>
1	New South Wales—capital city and regional centre	\$800,000
2	New South Wales—other	\$600,000
3	Victoria—capital city and regional centre	\$700,000
4	Victoria—other	\$500,000
5	Queensland—capital city and regional centre	\$600,000
6	Queensland—other	\$450,000
7	Western Australia—capital city	\$500,000
8	Western Australia—other	\$400,000
9	South Australia—capital city	\$500,000
10	South Australia—other	\$350,000
11	Tasmania—capital city	\$500,000
12	Tasmania—other	\$400,000
13	Australian Capital Territory	\$500,000

<b>Price Cap for an area</b>		
<b>Item</b>	<b>Area</b>	<b>Price cap</b>
14	Northern Territory	\$500,000
15	Jervis Bay Territory and Norfolk Island	\$550,000
16	Christmas Island and Cocos (Keeling) Islands	\$400,000

The new price caps apply to the FHLDS generally (that is, for guarantees issued under section 29I of the Investment Mandate) and to the Family Home Guarantee. The new price caps apply in relation to guarantees issued on and after 1 July 2021. In circumstances where the Minister has determined to roll over unissued guarantees from a previous financial year, the relevant price cap is the price cap that applies when the guarantee is issued. (Schedule 1, item 8, subsection 29F(1)).

The price caps for the New Home Guarantee are not affected by the amendment.

### **Consequential and other amendments**

The Instrument makes other minor amendments set out below that are consequential to the substantive changes made by the Instrument and described above:

- the outline at the beginning of Part 5A of the Investment Mandate is amended to reflect the establishment of the Family Home Guarantee and the extension of the New Home Guarantee. (Schedule 1, item 2, text box at the beginning of Part 5A);
- definitions of the terms ‘eligible single parent’ and ‘Family Home Guarantee’ are inserted in section 4 of the Investment Mandate. These terms are described above. (Schedule 1, item 1, section 4); and
- a number of subheadings and cross-references are inserted or amended, and provisions are repealed where they have been consolidated within other provisions. (Schedule 1, items 6, 9, 13, and 15, sections 29D and 29IA).